IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1014 of 2002 alongwith CWPs. No.1196, 1198 and 1199 of 2002.

Decided on: 21.05.2007.

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1. CWP No.1014/2002.

Nand Lal.

… … … Petitioner.

Versus

H.P.S.E.B. and others.

… … … Respondents.

For the petitioner: **Mr. Neel Kamal Sood, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate for Respondents-Board.**
Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals for respondent(s)-State.

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2. CWP No.1196/2002.

Nek Chand.

… … … Petitioner.

Versus

H.P.S.E.B. and others.

… … … Respondents.

For the petitioner: **Mr. Neel Kamal Sood, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate for Respondent(s)-Board.**
Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals for respondent(s)-State.

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3. CWP No.1198/2002.

Tej Ram.

… … … Petitioner.

Versus

H.P.S.E.B. and others.

… … … Respondents.

For the petitioner: **Mr. Neel Kamal Sood, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate for Respondent(s)-Board.**
Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals for respondent(s)-State.

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4. CWP No.1199/2002.

Tej Ram.

… … … Petitioner.

Versus

H.P.S.E.B. and others.

… … … Respondents.

For the petitioner: **Mr. Neel Kamal Sood, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate for Respondent(s)-Board.**
Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals for respondent(s)-State.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1]

Rajiv Sharma, Judge (Oral):

Since the common question of law is involved in these writ petitions, the same are clubbed and heard together.

Whether reporters of local papers may be allowed to see the judgment?

The question requiring consideration of this Court in these petitions is whether the Government was justified in declining to make reference only on the ground of delay in raising the dispute.

CWP No.1014/2002:

The brief facts of this petition necessary for adjudication are that the petitioner was engaged as daily rated Beldar with respondents No.1 to 3 in the year 1980 and was retrenched in the year 1985. The State had refused to make the reference to the Labour Court on the ground of delay of fourteen years.

CWP No.1196/2002:

The brief facts of this petition are that the petitioner was initially engaged as daily rated Beldar with respondents No.1 to 3 on 1.1.1993 and he worked as such upto 31st March, 1993. Thereafter his services were terminated by the respondents. The Government had refused to make a reference on the ground of delay of six years.

CWP No.1198/2002

The brief facts necessary for adjudication of this petition are that the petitioner was engaged as daily rated Beldar with respondents No.1 to 3 in the year 1997 and was retrenched in the year 1997. The Government refused to make the reference on the ground of delay of five years.

CWP No.1199/2002:

In this case the Government had refused to make the reference on the ground of delay of six years.

The learned counsel appearing on behalf of the petitioners have argued that the Government had no jurisdiction to delve into the merits of the case and it was bound to make the reference to the Labour Court. They submit that the question of delay was to be determined by the Labour Court after permitting the parties to lead their respective evidence. Mr. M.S. Chandel, the learned Advocate General and Mr. Shrawan Dogra have supported the orders passed by the Government declining to make the reference(s).

The question whether the State had the jurisdiction to decline the references) or not only on the ground of delay is no more res-integra in view of the law laid down by the Hon'ble Supreme Court and various High Courts.

The Hon'ble Supreme Court in **The M.P. Irrigation Karamchari Sangh v. State of M.P. and another, AIR 1985 SC 860** has held that the Government had exceeded its jurisdiction in refusing to refer the dispute to Tribunal by making its own assessment unilaterally of the reasonableness of demands on merits. Your Lordships have held as under:-

> **"We have considered the rival contentions raised before us. The High Court apparently has relied upon the following passage in Bombay Union of Journalists v. State of Bombay AIR 1964 SC 1617 :**
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> > **" …. But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute**

> **when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5) or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not."**

We find that the approach made by the High Court was wrong and the reliance on the above passage on the facts of this case, is misplaced and unsupportable. This Court had made it clear in the same Judgment in the sentence preceding the passage quoted above that it was the province of the Industrial Tribunal to decide the disputed questions of fact.

> **" …. Similarly, on disputed questions of fact, the appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal…… "**

Therefore, while conceding a very limited jurisdiction to the State Government to examine patent frivolousness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. S. 10 permits appropriate Government to determine whether dispute 'exists

or is apprehended' and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication. When a reference is rejected on the specious plea that the Government cannot bear the additional burden, it constitutes adjudication and thereby usurpation of the power of a quasi judicial Tribunal by an administrative authority namely the Appropriate Government. In our opinion, the reasons given by the State Government to decline reference are beyond the powers of the Government under the relevant sections of the Industrial Disputes Act. What the State Government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterized as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.

Same is the case with the conclusion arrived at by the High Court accepting the stand of the State Government that the employees were not entitled to the Chambal allowance as the same was included in the consolidated pay. This question, in fact, relates to the conditions of service of the employees. What exactly are the

conditions of service of the employees and in what manner their conditions of service could be improved are matters which are the special preserve of the appropriate Tribunals to be decided in adjudicatory processes and are not ones to be decided by the Government on a prima facie examination of the demand. This demand again can never be said to be either perverse or frivolous.

There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should not be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render S.10 and S. 12(5) of the Industrial Disputes Act nugatory.

We have no hesitation to hold that in this case, the Government had exceeded its jurisdiction in refusing to refer the dispute to the Tribunal by making its own assessment unilaterally of the reasonableness of the demands on merits. The High Court erred in accepting the plea of the Government that refusal to refer the demands in this case was justified. The demands raised in this case have necessarily to be decided by the appropriate Tribunal on merits."

Similarly, the Hon'ble Supreme Court in **Dhanbad Colliery Karamchari Sangh Versus Union of India and Others, 1991 Supp (2) SCC 10** has held that the Government cannot itself decide the dispute on the ground that Union failed to establish that workmen were engaged in prohibited categories under Contract Labour (Regulation and Abolition) Act, 1970. Their Lordships of Supreme Court have held as under:-

> **"After hearing learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the opinion that this appeal must succeed. The Central Government instead of referring the dispute for adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act, 1947, itself decided the dispute which is not permissible under the law. We, accordingly, allow the appeal, set aside the order of the High Court and of the Central Government and direct the Central Government to refer the dispute for adjudication to the appropriate Industrial Court under Section 10 of the Industrial Disputes Act, 1947. We further direct the Central Government to make the reference within three months."**

The Hon'ble Supreme Court in **Telco Convoy Drivers Mazdoor Sangh and another, v. State of Bihar and others, AIR 1989 SC 1565** has held that the Government while considering the question whether reference should be made or not cannot delve into merits of dispute and determine the lis itself. Their Lordships of Supreme Court have observed as under:

"Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory."

Similarly, the Hon'ble Supreme Court in a case between **Abad Dairy Dudh Vitran Kendra Sanchalak Mandal and Abad Dairy and others, 1990 (6) F.L.R. 282** has held as under:-

"We have heard counsel for the appellant as well as counsel for the respondents. We are of the opinion that having regard to the facts of the case as well as the voluminous evidence sought to be adduced by both sides, the question as to whether the members of the association are workmen or not requires detailed investigation of facts. It is true that there appeared to be certain agreements

entered into between the respondents and the appellants but it is the case of the appellants that, agreement apart, there is plenty of evidence in the form of instructions and circulars issued by the respondents which would show that the members of the association were really workmen and not commission agents as alleged. In fact, in pursuance of the permission given by this Court to file affidavits the parties have filed affidavits running to several pages setting out facts in support of their respective contentions. We have also heard both counsel for sometime and are satisfied that the issue requires detailed examination of facts and can be satisfactorily adjudicated upon only by a Tribunal.

We are of opinion that neither a writ proceeding in the High Court nor an appeal under Article 136 is the proper forum in which these factual contentions and allegations should be gone into. The High Court itself has observed at various places in its judgment that the nature of the dispute between the parties and the facts and circumstances were such that a writ petition was not the appropriate forum to enter into such facts but seems to have allowed itself to be persuaded to go into the question perhaps because the counsel on both sides were not adverse to that course. We however think that the High Court should not have done this but, instead, should have directed the Government to refer the disputes between the parties to an Industrial Tribunal, making the issue of the jurisdictional fact, viz., as to "whether the appellants workmen?" also one of the terms of reference. We say this

because, though there are agreements between the parties, not only is the interpretation of the agreement a matter of dispute; it will also be necessary to consider whether the agreement reflects the real position or whether the conduct of the parties and other material placed on record show that the appellants were employees as suggested by the appellants and not commission agents as suggested on behalf of the respondents. Also, the only ground on which the State Government declined to make a reference was that the appellants were not workmen. This view is not so obvious or patent on the facts before us. In the circumstances, we think the best course is to set aside the order of the High Court and direct that the matter be gone into by an Industrial Tribunal after the Government has made an appropriate order. we, therefore, allow these appeals, set aside the order of the High Court and direct the State Government to refer to an Industrial Tribunal all the disputes between the parties including the preliminary question whether the appellants are workmen within the meaning of Industrial Disputes Act or not.

The State Government is directed to make the above reference within a period of two months from today. In the meantime, in the interests of justice, status quo should be maintained by both the parties, as already directed by this Court on December 13, 1988. This shall continue for a period of ten weeks from today. This will not, however, preclude the respondents from taking such action against individual members of the appellants for misconduct, breach of the

agreement or the like as may be open to them in law, in case any occasion should arise therefore. We wish to make it clear that in view of our above conclusion, we express no opinion on the findings contained in the judgment of the High Court on the evidence before it as to whether the appellants are workmen or not and leave the matter to be decided afresh by the Tribunal on the evidence led before it, unfettered by the findings of the High Court in this behalf."

The Hon'ble Karnataka High Court has held in **Gurumurthy Versus State of Karnataka**, **1995 (3) SLR 533** that the Government cannot refuse a reference on the ground of delay alone so long as the industrial dispute exists or is apprehended. His Lordship has observed as under:

"The learned Counsel for the petitioner also relief on the judgment of this Court in L. Narayanappa v. State of Karnataka and Anr. (W.A. No.1219 of 1990 dt. July 31, 1991), wherein this Court has held that it is not open to the Government to reject the Reference either on the ground of delay or that the enquiry was not held properly etc., because these functions are within the domain of the adjudicating authority on a Reference. Taking all these circumstances into consideration I am of the view that the Government does not pass a judicial or a quasi-judicial order while rejecting the Reference and the Government cannot refuse Reference on the ground of delay alone. I am respectfully bond by the Division Bench decision of this Court referred to above. However, in this particular case the reasons given for the delay have not been properly

explained by the Government. In these circumstances there will be a Writ of Certiorari quashing Annexure-F and a direction directing the Government to reconsider the matter afresh in accordance with law. The Government will pass appropriate order within a period of two months from the date of communication of this Order. Petition is disposed of accordingly. There will be no order as to costs."

The Hon'ble Punjab and Haryana High Court has held in **C.S. Sandhu Versus State of Punjab and another, 1995 (7) SLR 186** that the Government cannot dwell upon the merits of the dispute and take upon itself the determination of lis between the parties. Their Lordships of Punjab and Haryana High Court have observed as under:-

"A plain reading of section 10(1) of the Act shows that while taking a decision as to whether a reference should or should not be made, the Government is required to consider as to whether an industrial dispute exists or is apprehended. The scope of enquiry while taking a decision in the matter is limited. The Government cannot dwell upon the merits of the dispute and take upon itself the determination of the list between the parties. If a dispute exists or is apprehended, the Government cannot ordinarily decline to make a reference. Refusal to make a reference may be justified where at a bare examination of a controversy between the parties, the Government comes to the conclusion that the dispute sought to be raised is frivolous or vexatious. In Bombay Union of Journalists' case (supra), their Lordships

of the Supreme Court examined the scope of Section 10(1) and observed :-

> **"But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference. Likewise, if the impact of the claim on the general relations between the employer and the employees in the region is likely to be adverse, the appropriate Government may take that into account in deciding whether a reference should be made or not."**

The Supreme Court however, observed :-

> **"Similarly, on disputed question of fact, the appropriate Government cannot purport to reach final conclusions, because that would normally lie within the jurisdiction of Industrial Tribunal, even the questions of law cannot be decided by the Government because that would be within the province of the Industrial Tribunal."**

The Hon'ble Punjab and Haryana High Court in **Hari Kishan (Shri) Versus The State of Haryana and another, 1996 (8) SLR 80** that the Government cannot assume the jurisdiction to decide

the dispute on merits and decline the reference. His Lordship has observed as under:-

> **"Challenge herein is to order, Annexure P-6, dated February 20, 1981, vide which reference sought by the petitioner for adjudication of his cause with regard to termination of services was declined by observing as follows:-**
>
> > **"On the subject cited above, you are hereby informed that the Government do not consider your case fit to be referred to the Labour Court for adjudication because inquiry repeals that your services have been terminated after the charges against you were proved in the domestic enquiry."**
>
> **In view of this Court, the Government has arrogated to itself the right to decide the controversy on merits which is in the exclusive domain of the Labour Court/Industrial Tribunal. It has been held in numerous judicial pronouncements of the Supreme Court as also this Court inclusive of one reported as D.S. Sandhu v. State of Punjab and others, 1995(4) R.S.J. 684, that the scope of enquiry while taking a decision in the matter is limited and the Government cannot dwell upon the merits of the dispute and take upon itself the determination of the lis between the parties. If a dispute exists or is apprehended, Government cannot ordinarily decline to make a reference as also that refusal to make a reference may be justified where at a bare examination of a controversy between the parties, the Government comes to the conclusion that the dispute sought to be raised is frivolous or**

vexatious. The Division Bench while holding so in D.S. Sidhu's case (supra), relied on number of judgments of the Supreme Court."

The Hon'ble Punjab and Haryana High Court has again held in **S.C. Parida Vesus State of Haryana and others, 1999 (1) SLR 296** that the Government while considering the question whether reference should be made or not cannot delve into the merits of the dispute. His Lordship has observed as under:-

"The sole controversy raised in the present writ petition is that as to if the petitioner was a workman or not? The question that petitioner while working as an Accounts Officer, fell in the supervisory capacity or not is to be adjudicated by the competent authority under the Industrial Disputes Act.

The said contention in deed is well taken. We know from the decision in the case of Telco Convoy Drivers Mazdoor Sangh and another v. State of Bihar and others, AIR 1989 SC 1565 that the appropriate Government has administrative functions. The Government while considering question whether reference should be made or not cannot delve into the merits of the dispute. The controversy that has been referred to above would be adjudicated only after making a reference to the appropriate forum under the Industrial Disputes Act. It cannot be held that the claim of the petitioner has absurd and no reference was required to be made."

The Division Bench of the Hon'ble Karnataka High Court has held in **P. Mallesha Versus Union of India and others, 1999 (3)**

SLR 533 that the Government cannot delve into the merits of dispute and take upon itself the determination of lis which is in exclusive jurisdiction of the Labour Court/Tribunal. Their Lordships have held as under:-

> **"The order of the Learned Single Judge cannot be sustained. It has been held time and again by the Supreme Court of India as well as the different High Courts that the appropriate Government cannot delve into the merits of the dispute and take upon itself the determination of the lis which is in the exclusive jurisdiction of the Labour Court/Tribunal. Reference may be made to Ram Avtar Sharma v. State of Haryana reported in AIR 1985 SC 915 : [1985(2) SLR 57 (SC)]** :
>
> > **"If the Government perform an administrative act while either making or refusing to make a reference under S. 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by S.10. S.10 requires the appropriate Government to be satisfied that an industrial dispute to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant, extraneous or not germane to the exercise of power it is**

> **liable to be questioned in exercise of the power of judicial review. Therefore, the court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter."**
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> **The question regarding delay has not been considered by the Government and the Reference was not declined on the ground of delay. The Additional point taken by the Learned Single Judge regarding delay in making the petition under Section 10 could not under the circumstances of the case be taken into account."**

The Hon'ble Madras High Court has also held in **Cheran Transport Employees' Union, Kattor, Coimbatore Versus Govt. of Tamil Naud and another, 1999 (6) SLR 579** that there is no prescribed limit for raising the dispute in the statute.

The Hon'ble Andhra Pradesh High Court has held in **A.P.S.R.T.C. Versus The Presiding Officer, Addl. Industrial Tribunal-cum-Additional Labour Court, Hyderabad and another, 1999 (7) SLR 375** that lapse of five years in approaching the Tribunal was not fatal.

The Hon'ble Punjab and Haryana High Court has held in **The Ambala Central Cooperative Bank Limited Versus State of Haryana, 2000 (2) SLR 754** that the relief under the Industrial

Disputes Act cannot be denied to workman merely on the ground of delay.

The Division Bench of Hon'ble Calcutta High Court in **The Secretary (Policy) Regional Director (Food) Employees Association Versus Food Corporation of India & Ors., 2000 (5) SLR 728** has held that no period of limitation has been prescribed for raising and industrial dispute.

The Hon'ble Punjab and Haryana High Court has again held in **Pale Ram Versus State of Haryana and others, 2000 (8) SLR 750** that the delay cannot be the sole cause for rejecting the reference.

The Hon'ble Punjab and Haryana High Court in **Piara Singh Vesus State of Haryana and others, 2001 (3) SLR 552** has held that the termination of services of workman were unjust in the matter where the Labour Court has answered the reference in negative being belated as the workman had raised the dispute after nine years.

The Division Bench of the Hon'ble Madhya Pradesh High Court in **Ramadhar Tiwari Versus Union of India and others, 2002 (8) SLR 681** has held that refusal to refer the dispute raised after five years was not proper.

The upshot of the above discussion is that the State Government has wrongly declined to make a reference to the Labour Court. The State Government could not delve into the merits of the case and was bound to make a reference to the Labour Court. The Labour Court alone had the jurisdiction to go

into the question of delay as well after hearing the parties. The Labour Court had the jurisdiction to mould the relief as well after taking into consideration the delay factor as well.

Accordingly, these petitions are allowed and the impugned orders, i.e. Annexure P-1, dated 21.5.2002 in CWP No.1014 of 2002, Annexure P-1, dated 25.5.2002 in CWP No.1196 of 2002, Annexure P-1, dated 25.5.2002 in CWP No.1198 of 2002 and Annexure P-1, dated 25.5.2002 in CWP No.1199 of 2002 respectively are quashed and set aside.

The Respondents-State is directed to make the reference(s) to the Labour Court-cum-Industrial Tribunal within a period of two months from receipt of the certified copy of the judgment.

There shall be no order as to costs.

May 21, 2007 **(Rajiv Sharma)**
(sck). **Judge**